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Attorney for Robert D. Miller Jr., Acting United States Trustee

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

In re

Case No. 09-6082-HO  
(Reference withdrawn in Bankruptcy  
Case No. 08-36637-tmb11)  
**LEAD CASE**

Stayton SW Assisted Living, LLC dba  
Lakeside Assisted Living Community,

**THE FOLLOWING CASES ARE  
JOINTLY ADMINISTERED WITH  
08-36637-tmb11**

Medallion Assisted Living Limited  
Partnership, dba Medallion Senior  
Living,

Nos. 08-36638-tmb11

## Colonial Gardens, LLC, aka Colonial Gardens Residential Care Community,

08-36655-tmb11

## Hendersonville Senior Living, LLC,

08-36673-tmb11

## Champlin, LLC

08-5 / 14 / -umb11

## Court at Clifton

08-3 / 154-tmb11

## Court at Greece, LLC,

08-37158-tmb11

## Court at Orchard Park,

08-37161-tmb11

## Kearney Senior Living, LLC

08-37152-tmb11

McCook Senior Living, LLC

08-37148-tmb11

## Montclair Senior Living, LLC

08-37159-tmb11

Sandollar Court Memory Care

08-37157-tmb11

1	Seward Senior Living, LLC,	08-37168-tmb11
2	St. George Senior Living, LLC	08-37155-tmb11
3	Vancouver Care, LLC,	08-37156-tmb11
4	Vegas Assisted Living, LLC,	09-30151-tmb11
5	Village at Greece, LLC,	08-37149-tmb11
6	Wayne Senior Living, LLC,	08-37146-tmb11
7	W-E Specialized Care, LLC,	08-37151-tmb11

8                   Debtors.

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10                   **UNITED STATES TRUSTEE'S  
11                   RESPONSE TO ORDER TO SHOW  
12                   CAUSE WHY PATIENT CARE  
13                   OMBUDSMAN SHOULD NOT BE  
14                   TERMINATED**

**HEARING REQUESTED**

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15                  The Acting United States Trustee, Robert D. Miller Jr., by and through Trial  
16                  Attorney Carla G. McClurg, hereby responds to the court's order to show cause why the  
17                  appointment of the patient care ombudsman in the above jointly administered cases  
18                  should not be terminated (docket #303).

19                  This court withdrew the reference of the bankruptcy court in these jointly  
20                  administered bankruptcy cases pursuant to an order entered on April 29, 2009. Before  
21                  this court withdrew the reference, on January 28, 2009, Judge Trish M. Brown ordered  
22                  the United States Trustee to appoint a patient care ombudsman in all of these jointly  
23                  administered cases (except four New York debtors that do not operate senior living  
24                  facilities<sup>1</sup>) to monitor the quality of patient care, file reports, and take immediate action

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26                  <sup>1</sup> The four cases in which Judge Brown did not order the United States Trustee to  
                        appoint a patient care ombudsman include: In re Court at Clifton Park, LLC, Case No. 08-  
                        37154-tmb11; In re Court at Greece, LLC, Case No. 08-37158-tmb11; In re Court at  
                        Orchard Park, LLC, Case No. 08-37161-tmb11; and In re Village at Greece, LLC, Case No.  
                        08-37149-tmb11.

1 in the event that the quality of patient care declines (docket #124). The United States  
 2 Trustee appointed Suzanne Koenig (the “Ombudsman”) as the patient care ombudsman  
 3 in these cases on February 4, 2009 (docket #147).<sup>2</sup>

4       The Bankruptcy Abuse and Consumer Protection Act of 2005 added section 333  
 5 to the Bankruptcy Code. Section 333 contains specific provisions regarding the  
 6 appointment of a patient care ombudsman within 30 days after the commencement of  
 7 any bankruptcy case for a “health care business.” 11 U.S.C. § 333(a)(1). The patient  
 8 care ombudsman essentially serves as a patient advocate who is responsible for  
 9 monitoring the quality of patient care, reporting to the court on the status of patient care,  
 10 and representing the interests of the patients. 11 U.S.C. § 333(b); see Collier on  
 11 Bankruptcy ¶ 333.01 (15<sup>th</sup> ed. 2009).

12       Section 333 of the Bankruptcy Code makes the appointment of a patient care  
 13 ombudsman mandatory if the debtor is a health care business “unless the court finds that  
 14 the appointment of such ombudsman is not necessary for the protection of patients under  
 15 the specific facts of the case.” The language of section 333 is clear that the court must  
 16 make a specific finding as to whether a patient care ombudsman is necessary for the  
 17 protection of patients in a particular case.

18       The language of section 333 further makes it clear that the well-being of patients  
 19 is paramount. Cost is only one of the numerous factors that courts consider in deciding  
 20 whether the appointment of an ombudsman is not necessary for the protection of  
 21 patients. Courts have considered the following non-exclusive factors:

- 22           (1)     The cause of the bankruptcy;
- 23           (2)     The presence and role of the licensing or supervising entities;
- 24           (3)     The debtor’s past history of patient care;
- 25           (4)     The ability of the patients to protect their rights;

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26       <sup>2</sup> Suzanne Koenig’s company, SAK Management Services, LLC, was employed in  
 the jointly administered cases pursuant to an order entered on April 29, 2009 (docket #  
 265).

- (5) The level of dependency of the patients on the facility;
- (6) The likelihood of tension between the interests of the patients and the debtor;
- (7) The potential injury to the patients if the debtor drastically reduced its level of patient care;
- (8) The presence and sufficiency of internal safeguards to ensure appropriate level of care; and
- (9) The impact of the cost of an ombudsman on the likelihood of a successful reorganization.

In re Valley Health System, 381 B.R. 756, 761 (Bankr. C.D. Cal. 2008); In re Alternate Family Care, 377 B.R. 754, 758 (Bankr. S.D. Fla. 2007).

The Ombudsman is the only professional that is tasked with evaluating the quality of care afforded to these vulnerable residents. The United States Trustee has consulted with the Ombudsman regarding this court's order to show cause. The United States Trustee is convinced that the Ombudsman's services are necessary for the protection of the patients of the facilities in the cases in which she is appointed. The Ombudsman's reports filed thus far in these cases are the best proof that Congress was right to be concerned about patient welfare in bankrupt facilities.

The court should hold a hearing and make specific findings consistent with section 333 of the Bankruptcy Code before determining if the Ombudsman should be terminated. The language of the statute suggests that those opposing an ombudsman bear the burden of demonstrating that an ombudsman is not necessary. To do so, they must present specific facts showing that patients are otherwise protected from the risks that led Congress to mandate an ombudsman for financially distressed health care businesses.

1 DATED this 21st day of September, 2009.  
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4 Respectfully submitted,  
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7 ROBERT D. MILLER JR.  
8 Acting United States Trustee  
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11 /s/ Carla G. McClurg  
12 CARLA G. McCLURG, CSB# 227738  
13 Trial Attorney  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on September 21, 2009, I served a copy of the foregoing

**UNITED STATES TRUSTEE'S RESPONSE TO ORDER TO SHOW CAUSE WHY  
PATIENT CARE OMBUDSMAN SHOULD NOT BE TERMINATED** by mailing a copy of this document, by United States first class mail, postage prepaid, addressed to the following:

Oregon Attorney General  
Department of Justice  
1162 Court St NE  
Salem, OR 97301

I further certify that based on the District Court's electronic case filing records, the following person(s) will be served electronically when the foregoing document is filed with the court:

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Trial Attorney